

7-1

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

10,976

FILE: B-193752

DATE: August 6, 1979

MATTER OF: Cardion Electronics--Request for
Reconsideration

DLG01752

*[Protest Alleging That RFP Should Have Been Cancelled Rather Than
Digest: Cancelled Amended]*

Request for reconsideration does not demonstrate errors of law in prior decision which denied protest that RFP should be canceled. Prior decision is affirmed.

Cardion Electronics has requested reconsideration of our decision which denied its protest concerning request for proposals (RFP) No. LGM-8-7247, issued by the Federal Aviation Administration (FAA) (Cardion Electronics, B-193752, June 8, 1979, 58 Comp. Gen. 79-1 CPD 406). Cardion alleges errors of law in the decision. AGC00030

Cardion, which did not submit a proposal, had protested that the changes in the Government's requirements reflected in an amendment to the RFP were so substantial that the FAA should have canceled the RFP and resolicited. Cardion stressed its view that the cumulative effect of the changes was to greatly reduce the risk involved in contract performance. Our decision pointed out initially that insofar as the changes were readily and objectively quantifiable, it was by no means obvious why they should be regarded as so substantial as to warrant a complete revision of the solicitation (i.e., cancellation and resolicitation). We further stated:

"Insofar as the alleged substantial nature of the changes is premised on the protester's perception of the reduced risk they entail, it must be noted that an individual prospective contractor's perception of the risk is of no especial concern to the Government. The Government's concern is whether its minimum needs will be satisfied at a reasonable price. See

~~006034~~

Comten, Inc., B-186983, December 8, 1976, 76-2 CPD 468, affirmed, 77-1 CPD 173. When the Government issues a solicitation, it is required to provide a clear statement of its requirements so that all offerors will be competing on an equal basis (Fiber Materials, Inc., 54 Comp. Gen. 735 (1975), 75-1 CPD 142) but the Government makes no guarantee that each offeror will be facing the same degree of risk; one offeror, due to its superior experience or resources, may well enjoy a competitive advantage over another. Telos Computing, Inc., *supra*. We see little merit, therefore, in the idea that the substantial nature of changes in an RFP should be judged in terms of an individual prospective offeror's perception of their effect on risk.

"* * * If a prospective offeror believes the terms of the RFP involve too much risk, it has a choice of either submitting a proposal in response to the RFP, or protesting prior to the closing date for receipt of initial proposals and specifically challenging those areas of the RFP it believes should be changed. We agree with Wilcox's comments to the effect that the Government cannot conduct its negotiated procurements on a 'start and stop' basis, with procurements being halted as various nonofferors change their minds about the degree of risk."

Initially, Cardion challenges this portion of the decision, and cites Defense Acquisition Regulation (DAR) § 3-805.4(b) (1976 ed.) in support of its position. While this regulation is not applicable to FAA procurements, we relied on it in our prior decision in the absence of any directly applicable provision in the Federal Procurement Regulations. It provides in pertinent part:

"* * * [N]o matter what stage the procurement is in, if a change or modification is so substantial as to

warrant complete revision of a solicitation, the original should be canceled and a new solicitation issued. In such cases, the new solicitation should be issued to all firms originally solicited, any firms added to the original mailing list and any other qualified firms."

Cardion maintains DAR § 3-805.4(b) indicates that the perspective of a company in its position is a proper one from which to judge the "substantiality" of changes in an RFP, because it is certainly a qualified firm with respect to this procurement. In this regard, we believe the portion of the regulation relied on by Cardion merely describes who should receive copies of a new solicitation after the contracting agency has made a determination that changes in the original RFP were so substantial as to warrant its cancellation. We do not believe the language of the regulation supports the interpretation Cardion advances.

Cardion's request for reconsideration goes on to argue at some length that the above-quoted portion of our decision is erroneous. In this regard, section 20.9(a) of our Bid Protest Procedures, 4 C.F.R. part 20 (1979) requires that a request for reconsideration specify errors of law and the legal grounds upon which reversal or modification of the decision is warranted. See also Corbetta Construction Company of Illinois, Inc., 55 Comp. Gen. 972, 975 (1976), 76-1 CPD 240, where we quoted from B-168673, October 26, 1970, as follows:

"While this Office will reconsider its decisions when it is alleged that they are based upon error of fact or law, such allegations must be supported by evidence, in the form of documentation or citations to controlling administrative or judicial precedent, which will convincingly illustrate how and why our conclusions are wrong."

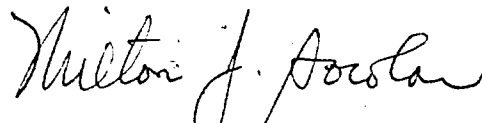
Aside from DAR § 3-805.4(b), supra, Cardion has cited no legal authorities in support of its arguments.

In effect, Cardion is merely expressing its disagreement with our analysis without offering any authority to demonstrate errors of law in our decision. In these circumstances, we do not believe any further discussion of the above-quoted portion of our decision is called for.

Finally, Cardion contends that our decision unreasonably disregarded the authority of American Air Filter Company, Inc., 57 Comp. Gen. 285 (1978), 78-1 CPD 136, also 57 Comp. Gen. 567 (1978), 78-1 CPD 443, and Kent Watkins & Associates, Inc., B-191078, May 17, 1978, 78-1 CPD 377.

These decisions, which we cited and discussed in our earlier decision, deal with the subject of whether a modification to a contract changes it so substantially that the work covered by the modification should be obtained by a new procurement. We believe our earlier decision (at pp. 21-23) adequately explained the differences between this line of authority and the cases dealing with the question whether changes to an RFP are so substantial as to warrant its cancellation. In addition, we pointed out (pp. 23-24) that the rationale of American Air Filter and Kent Watkins, even if applied in the present instance, offered no support for Cardion's case, and Cardion has not contested our analysis. Therefore, we believe no further discussion of this issue is necessary.

In view of the foregoing, we do not believe Cardion has demonstrated errors of law in our prior decision, and that decision is accordingly affirmed.



For the Comptroller General
of the United States